IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

TRUST PETITION NO.7 OF 1995
WITH
NOTICE OF MOTION NO.220 OF 2006 & MISC. PETITION 20/2006
IN
TRUST PETITION NO.7 OF 1995

Sonal Popatlal Savla. ..Petitioner.
Vs.
Khimji Manek Veera and ors. ..Respondents.

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Sonal Popatlal @ Nanji Hirji Savla. ..Petitioner.
Vs.
Khimji Manek Vira and ors. ..Respondents.
And
M.V.Kini
M/s. M.V.Kini & Co. ..Applicant.

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Sonal Popatlal @ Nanji Hirji Savla. ..Petitioner.
Vs.
Khimji Manek Vira and ors. ..Respondents.
And
Mahesh Khimji Vira. ..Applicant.

Mr. S.H.Doctor with Mr. Gautam Mehta with Mr. Jaideep Mitra, Mr. Bimal Bhabhda i/by Apter & Co. for the petitioners.

Mr. H.Rehman for the Respondent Nos. 1 to 3.

Mr. Prasad Dhakephalkar, Sr. Counsel qwith Ms.J.S. Saluja i/by M.V. Kini & Co. for the applicant.

Mr. A.G.Khale i/by Divya Kudva for the plaintiff in M.P.No.20/2006.

CORAM :R.S. MOHITE, J.
DATED 15/11/2006.

P.C.

1. The main Trust Petition No.7 of 1995 was for removal

of respondent Nos. 1 and 2 as the trustees of Hirji Ghelabhai Savla Trust and for appointment of the petitioner as trustee of the said trust. These reliefs were sought by prayer clause (a) and (b) and have already been granted by order of this court passed by (S.U.Kamdar,J.) on 3.2.2006. The only surviving prayer is prayer clause (c) which seeks a direction to respondent Nos. 1 and 2 to render true, proper and complete accounts of the income of the trust from Jan.1992 onwards and after the accounts are rendered for a further direction that they comply with the directions of the trust/petitioner. In my view, in view of Section 19 of the Indian Trust Act which enjoins a duty to furnish accounts, the respondent Nos. 1 and 2 are directed to furnish true, proper and complete accounts of the income of the trust from Jan.1992 onwards till the date on which they were removed under the order of this court. Trust petition stands disposed off accordingly.

2. Misc. Petition No.20 of 2006 was filed by one of the tenant in the trust premises and prayer (a) was finally allowed by the earlier order. The other relief which he has sought in prayer (b) is for a direction to the Court Receiver to handover a portion of the premises to Mr. M.V.Kini as applicant’s sub tenant or to the applicant directly. The record in this case indicates

that the Court Receiver was appointed in this case on 21.3.1997 and he took possession on 31.7.1997. In the circumstances, the Court Receiver will hand over the possession of the premises to the person whom he found to be in occupation on 31.7.1997.

3. Notice of Motion No.220 of 2006 has been filed by Advocate Mr. M.V.Kini of M/s. M.V. Kini & Co. claiming to be a sub tenant. It is found that as per the Court Receiver's report Mr. Kini was not in possession when the Court Receiver took the possession on 31.7.1997. It is seen that as per the Court Receiver's report Mr. J.P. Cama,Advocate was in possession of premises adm. 200sq.ft. on the 6th floor which is now claimed by Mr. M.V.Kini. I find that Mr. J.P. Cama has filed an affidavit in this proceeding stating that he has shifted elsewhere. However, he has not mentioned that he has surrendered his sub-tenancy. In the circumstances, Court Receiver to call upon Mr. J.P. Cama to make a categorical statement as to whether he has surrendered his right of sub tenancy. If the answer to this query is negative then possession be handed over to Mr. J.P.Cama, Advocate. If J.P. Cama states that he has surrendered his sub-tenancy, then possession of the premises be handed over by the Court Receiver to tenant Mr. Mahesh Khimji Vira. Counsel

appearing for Mr. Mahesh Vira states his client will not create third party right for a period of three weeks from the date when he takes the possession of the premises being 200sq.ft. on the 6th floor and in respect of which Mr. J.P. Cama was sub tenant. A Copy of the letter of the Court Receiver offering premises to the tenant Mahesh Khimji Vira, if issued, will also be send to the petitioner by registered post A.D. With the aforesaid directions, all the three matters are disposed off.

4. The parties agree that all other interim proceedings do not survive in view of the order passed in the main petition. Hence, all of them stand disposed off, by consent.

6. After the possession is handed over by the Court Receiver as per the aforesaid directions, Court Receiver to stand discharged.

(R. S. MOHITE, J.)